

Protection Order Committee
Judicial Conference of Indiana

Minutes

October 24, 2008

The Protection Order Committee met at the Indiana Judicial Center on Friday, October 24, 2008 from 12:00 noon – 3:30 p.m.

1. Members present. David Bonfiglio, Therese M. Brown, Stephen D. Clase, Katherine J. Garza, Ann L. Jochim, John D. Kitch III, J. Douglas Knight, Christopher A. Newton, Jose D. Salinas, Ronald T. Urdal, and Thomas H. Busch, Chair.
2. Staff present. Jeffrey Bercovitz and Tom Jones provided the committee with staff assistance.
3. Guests present. Pat Hess, Consultant, Entara Technology Group, and LeJuan Epperson, Associate Project Manager, JTAC; were also present.
4. Minutes approved. The minutes for the meeting on August 22, 2008 were approved.
5. New members. Judge Busch, Chair, welcomed Hearing Officer John D. Kitch III and Judge Ronald T. Urdal as new members of the committee.
6. Protection Order Deskbook.
 - a. Committee members completed review of Chapter 2, Clerks, for the Protection Order Deskbook.
 - b. Members of the committee reviewed Chapter 10, Federal Firearms Laws. They agreed the chapter should be distributed as revised to committee members. Committee members agreed to see how judges in their county react to the changes, find out the procedures in use in the county to either surrender or confiscate a firearm, and if there are not procedures, determine what law enforcement believes the procedures should be used to surrender or confiscate a firearm.
 - c. Committee members agreed to revise the Protection Order Deskbook and reviewed the following assignments:
 - (1) Judge Certo - Chapter 1, Jurisdiction;
 - (2) Completed - Chapter 2, Duties of Clerk;
 - (3) Mag. Clase - Chapter 3, Ex Parte Orders;
 - (4) Judge Busch - Chapter 4, Hearings;
 - (5) Mag. Williamson and Comm. Bishko - Chapter 5 and the portion of Chapter 6 which discusses No Contact Orders in Juvenile Court;
 - (6) Judge Salinas, Chapter 6, No Contact Orders, excluding juvenile court;
 - (7) Judge Bonfiglio – Chapter 7, Workplace Violence Restraining Orders;
 - (8) Judge Urdal – Chapter 8, Enforcement
 - (8) Hearing Officer Kitch III – Chapter 9, Modification and Termination;
 - (9) Judge Newton-Chapter 10, Federal and State Firearms Laws; and
 - (10) Judge Knight – Chapter 11, Full Faith and Credit

Committee members agreed to finish discussing Chapters 10, 3, and 4 at the January meeting; Chapters 5, 6 and 7 at the March meeting; Chapters 8, 9, 10 and 11 at the April meeting; and reserve the June meeting for final review of all chapters and revisions forms based on legislative amendments. Jeff Bercovitz agreed to distribute the updated version of each chapter to committee members in Word for revisions.

7. JTAC Update.

- a. LeJuan Epperson, Associate Project Manager, JTAC, reported 67 counties had deployed the Protection Order Registry and other counties were in various stages of training and deployment.
- b. Pat Hess reported the new no contact form, NCO-0102, No Contact Order While on Probation or Serving Executed Sentence would be in the protection order registry next week. Jeffrey Bercovitz reported the same form would be on the website for protection orders.

8. Other questions.

- a. Committee members discussed the use of protection orders to prevent harassment or intimidation of contractors by protestors for Interstate 69. Members of the committee agreed these cases would be very fact sensitive. If protestors were from outside the county or state, it would be difficult to identify them as respondents for protection orders. If there were many protestors, it could be difficult to issue many protection orders at once, since there should only be one protection order for each respondent. The protestors might be committing stalking if there were repeated protests that caused a contractor or his/her family to be placed in fear, depending on the facts of a case. The facts of an individual case might give rise to a prosecution for the crime of stalking or harassment. If there were too many protestors, there may be a need a parade permit, or may be noise ordinance concerns. This would cause the need for coordination of the protest with law enforcement for safety purposes. In addition, there may be First Amendment concerns with interference with a protest. The committee concluded there is no answer to whether a protection order could be filed by the contractor against protesters of a construction project, since the case would be very fact sensitive.
- b. Committee members discussed a question concerning whether every protection order case should get a case number, even if the petition does not allege facts to qualify for an order. Committee members agreed the Clerk should accept and assign a case number to the protection order petition, and the court would decide whether or not to dismiss it based on the court's reading of the petition and any additional information given by the petitioner.
- c. Members of the committee reviewed a request from a deputy sheriff to place additional information on the cover sheet. Jeffrey Bercovitz explained Indiana's participation in Project Passport, and how it was meant to standardize cover sheets among all the states. In addition, the deputy sheriff's additional information was about service, and he might be better served with a completely separate document as is used in Fayette County. The committee agreed not to amend the cover sheet for this purpose.
- d. Committee members discussed a question about lack of service information on the back of a protection order in Vanderburgh County. Committee members were unsure about the meaning of the question. Judge Knight agreed to discuss the procedures for service and how they were administered by the Clerk with the person who submitted the question.

e. Members of the committee reviewed a response to a question of whether city or town courts could issue protection orders. The response was the city or town court could issue a protection order if it was a court of record.

f. Committee members discussed a question about whether another state could charge an Indiana county for service of a protection order in the other state. They generally agreed the cost could be taxed to the respondent, the county attorney or prosecutor could negotiate with his/her counterpart in the other state, and this may be a conflict of laws issue with the other state. They agreed this issue should be reviewed in the Protection Order Deskbook.

g. Judge Busch reported Judge Heimann never received information the protection order forms were changed to permit a court to find, for example, domestic or family violence, but not find stalking or a sex offense if none was committed.

9. Future meeting dates.

a. Jeffrey Bercovitz reminded committee members meeting notifications would occur via email only.

b. Committee members agreed to meet again on: Friday, October 24, 2008, January 30, 2009, February 27, 2009* (*meet in February only if no January meeting,) March 27, 2009, April 24, 2009, June 26, 2009, August 28, 2009, and Friday, October 23, 2009, all from 12:00 Noon – 3:30 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law